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17 JUL 2006

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In re Application of
EMMANOUIL DOMAZAKIS
Application No.: 10/557,813
PCT No.: PCT/GR04/00034
Int. Filing Date: 18 June 2004
Priority Date: 14 October 2003
Attorney Docket No.: CFAV-6
For: METHOD OF PRODUCTION OF
CROISSANT TYPE PASTRY PRODUCTS WITH
CHARCUTERIE AND CREME CHEESE.....

DECISION ON PETITION

UNDER 37 CFR 1.137(a)

This is a decision on applicant's petition under 37 CFR 1.137(a) filed in the United States Patent and Trademark Office (USPTO) on 28 April 2006.

BACKGROUND

On 18 June 2004, applicant filed international application No. PCT/GR04/00034 which claimed a priority date of 14 October 2003, and which designated the United States. The deadline for entry into the national stage in the U.S. expired 30 months from the priority date, 14 April 2006.

On 28 April 2006, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*; the basic national fee for a small entity and a declaration of the sole inventor. Applicant filed the present petition requesting that the application be revived since the abandonment was unavoidable on the grounds that due to "the abrupt closing of undersigned counsel's law firm's office, the filing deadline for entry into the US National Stage of the present application did not get docketed by the undersigned counsel's present law firm until April 27, 2006." A statement of counsel accompanies the petition.

DISCUSSION

Under 37 CFR 1.137(a), a petition requesting that the application be revived on the grounds of unavoidable delay requires (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(l); (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unavoidable; and (4) a terminal disclaimer pursuant to 37 CFR 1.137(c).

Regarding Item (1), the proper response was payment of the basic national fee. The fee of \$150 is sufficient for entry into the national stage. The petition fee of \$250 was paid, satisfying Item (2). As for Item (4), the terminal disclaimer is not required in this application since it was filed after 08 June 1995.

Concerning item (3), counsel states that on April 2, 2006, a violent storm severely damaged the office building in which the law firm was recently relocated. The building was

immediately closed to all tenants and the floors on which the law firm are located remain closed at the time of filing this petition. Counsel moved his practice to his present law firm on March 1, 2006. Counsel states:

the file containing the papers necessary to enter the US National Stage of the present application was not transferred by the undersigned counsel's prior law firm to his present law firm until some time thereafter. That file was being processed by the undersigned counsel's present law firm as of April 2, 2006, when the violent storm hit Indianapolis and closed the law firm's offices, but the US National Stage filing deadline associated with that file had not yet been docketed as of April 2, 2006.

Counsel does not provide sufficient evidence to conclude that the abandonment of the international application was unavoidable. Counsel has not explained why the file had not been docketed as of April 2, 2006 nor does he explain how he was able to obtain the file on April 27, 2006 when the law firm offices were still inaccessible. Furthermore, counsel has not provided any supporting evidence or documentation to support the conclusion that the events described in the petition caused him to miss the filing deadline. The burden of proof to establish that the delay from the due date for the reply until the filing of a grantable petition was unavoidable rests on the applicant. MPEP §711.03(c) II F. Thus, the petition to revive under 37 CFR 1.137(a) for unavoidable delay is dismissed without prejudice.

RECOMMENDATION

As an alternative, applicant may request revival of the application via petition under 37 CFR 1.137(b).

Under 37 CFR 1.137(b), a petition requesting that the application be revived on the grounds of unintentional delay must be filed promptly after the date on which the application became abandoned. Such a petition under 37 CFR 1.137(b) must be accompanied by (1) a proper reply; (2) the petition fee required by law, and (3) a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional", and (4) by a terminal disclaimer and fee in all applications filed before 08 June 1995 pursuant to 37 CFR 1.137(c). Currently, the petition fee required by law is \$750.00 for a small entity.

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

This recommendation to file a petition under 37 CFR 1.137(b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

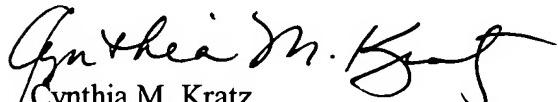
CONCLUSION

For the reasons above, the petition to revive under 37 CFR 1.137(a) is DISMISSED without prejudice.

The application remains ABANDONED.

Any request for reconsideration of the merits of this petition must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(a)." Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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